
FINAL RECOMMENDATIONS FOR THE BOARD OF CHIROPRACTIC EXAMINERS

RECOMMENDATIONS OF THE JOINT SUNSET REVIEW COMMITTEE AND THE DEPARTMENT OF CONSUMER AFFAIRS (DEPARTMENT)

ISSUE #1. (CONTINUE REGULATION OF THE PROFESSION?) Should the licensing and regulation of Doctors of Chiropractic be continued?

Recommendation #1: *The Joint Committee and the Department recommends continued state regulation of this profession.*

Comments: Because chiropractors provide health care in the same manner as other independent health practitioners, and there are attendant public health and safety considerations, the Department recommends continued state regulation of this profession. Chiropractic care requires a high level of skill and extensive knowledge of the human body. Licensing chiropractors ensures that they have the necessary knowledge, skills, and abilities to provide care without causing harm. In addition, regulation of the profession creates an enforcement structure so that action can be taken when unsafe, fraudulent, or incompetent activities occur.

ISSUE #2. (CONTINUE WITH THE BOARD?) Should the Board be continued, or its role be limited to an advisory body and the remaining functions be transferred to the Department?

Recommendation #2: *The Joint Committee and the Department recommends retaining the Board as the agency responsible for regulating the practice of chiropractic care. However, the Joint Committee recommends a review of this Board within two years to assure that past problems with the management and operation of this Board have been rectified.*

Comments: There were some long-standing staff and management deficiencies with this Board. The Board was also not taking an active role in assuring discipline of licensees who violated the Chiropractic Act, nor setting appropriate practice standards for the profession. Since 1996, the Board has been making attempts to rectify these problem areas, however, the Joint Committee and the Department should assure that this Board continues its efforts to provide improved consumer protection and addresses other issues as outlined in this report.

ISSUE #3. (PLACE THE BOARD UNDER THE JURISDICTION OF THE DEPARTMENT?)
Should the Board of Chiropractic Examiners be placed under the jurisdiction of the Department of Consumer Affairs like all other health-related professional licensing boards?

Recommendation #3: *The Joint Committee recommends that the status quo be maintained and that the Board not be placed under the jurisdiction of the Department. However, given the proven need for flexibility in modifying licensing laws and the potential benefits to the Board from the Department's expertise, the Department concurred with the Joint Committee's preliminary recommendation that the Legislature take action to place an initiative on the ballot to move the Board into the Department structure.*

Comments: The Board of Chiropractic Examiners is unusual among state regulatory entities since it is only one of two professional boards established by a voter-approved initiative, rather than by legislative action. Created in 1922, the Board regulates the practice of chiropractic care and is completely independent of the Department, which distinguishes it from the state's other health professional licensing programs. As a consequence, it is not subject to any oversight or administrative process review within the executive branch, as are other licensing boards under the Department. The current structure also prevents the Board from utilizing the Department's regulatory expertise and the administrative economies of scale available to other Department programs. It should be noted that there is precedent for the Board being under the Department as it was voluntarily housed in the Department from the 1940s to the 1970s.

ISSUE #4. (SHOULD ALL GENERAL REQUIREMENTS FOR OTHER HEALTH-RELATED LICENSING BOARDS APPLY TO THIS BOARD?) Should all general provisions (and future provisions) of the Business and Professions Code that apply to all other health-related licensing boards under the Department, apply to this Board?

Recommendation #4: *The Joint Committee recommends that the Business and Professions Code should be amended so that, in all respects, this regulatory program will be subject to the same consumer protection requirements as all other health practitioner licensing boards. The Board should also pass regulations to implement these changes. If the Board is unable to adopt certain requirements, then it should seek the authority necessary under the Initiative Act to effect these changes.*

Comments: Under Section 4 of the Initiative Act, the Board may adopt such rules and regulations that it may deem proper and necessary for the performance of its work, the effective enforcement and administration of this act, the establishment of educational requirements for license renewal, and the protection of the public. There are a number of provisions under the Business and Professions Code that apply to all other health-related licensing boards, but not to this Board. This would include cite and fine authority, inspection authority, injunctive relief, board and public member requirements, examination and review requirements, periodic sunset review, and all future requirements or changes made by the Legislature that apply to all health-related boards under the Department.

The Legislature must generally rely upon the Board to implement similar requirements, or attempt (and remember) to include this Board in any statutory changes that it considers necessary for other boards under the Department. And, it is not always clear whether the Legislature has this authority in the first place, since it is not stated in the Chiropractic Initiative Act. It should be made clear by the Legislature that this Board will be subject to the same consumer protection requirements as all other health practitioner licensing boards, and that the Board should pass regulations to implement these changes. If the Board is unable to adopt certain requirements, then it should seek the authority necessary under the Initiative Act to effect these changes. Although there have been concerns raised by the profession about amending the Initiative Act, there is no clear argument why this board should not be treated similar to other consumer health-related boards, and subject to the same consumer protection requirements. This Board should not be allowed to continue as an unaccountable “fourth branch” of government just because it was created by an Initiative Act.

ISSUE #5. (ARE THERE STILL MANAGEMENT AND PRACTICE ISSUES THAT THE BOARD NEEDS TO ADDRESS?) There were some long-standing staff and management deficiencies with the Board. The Board was also not taking an active role in assuring discipline of licensees who violated the Chiropractic Act nor setting appropriate practice standards for the profession.

Recommendation #5: *The Joint Committee recommends that the Board and staff should continue its effort to improve on the efficiency and operation of the management of this Board. It should conduct a thorough review of all regulations and codify those that have been challenged and strengthen those that are considered weak. The Board should consider trends in the industry and establish proactive policies and regulations to address new enforcement challenges. For example, there are a number of practice issues that the Board should address, including: (1) The appropriate use of specialty titles or certifications by chiropractors; (2) The use of certain treatments, experimental devices or procedures and “alternative” products; (3) The use of x-ray equipment by chiropractors; (4) Clarification on use of physical therapy techniques by chiropractors; (5) Qualification of chiropractors to perform school physicals; and, (6) Authority needed to deal with unlicensed chiropractic practice.*

Comments: Past operational problems with this Board include: (1) budget problems that resulted in illegal deficit spending and suspension of enforcement cases because of insufficient funds; (2) inconsistent and inappropriate application of chiropractic practice laws and regulations; (3) staffing problems; (4) lack of cite and fine program; (5) no measurable consumer outreach or education efforts; (6) backlog of enforcement cases; (7) focus on micro-managing of staff rather than policy-making or long-range planning. The Board also has had some long-standing management deficiencies including budget shortfalls and excess reserves, low employee morale, inadequate data reporting systems, and lack of long-range planning. Recent staffing changes have resulted in promising improvements in the day-to-day management of the Board’s operations. However, the Board itself, as a policy making body, needs to show more leadership in its enforcement of the Chiropractic Act, as opposed to relying on an overly technical, highly bureaucratic approach to chiropractic discipline. It also needs to deal more directly with practice related issues, including any advances in the use of new diagnostic and/or treatment procedures, since the Legislature does not appear to have authority in this area.

ISSUE #6. (ARE THERE STILL CHANGES OR IMPROVEMENTS NECESSARY TO ENHANCE THE BOARDS ENFORCEMENT PROGRAM?) The Board has made significant efforts to improve its enforcement program since 1996. Nonetheless, there are still improvements that the Board should make to enhance its consumer protection role.

Recommendation #6: *The Joint Committee recommends that the Board should adopt the best practices of other boards that have strong enforcement programs. Examples of these practices include streamlining complaint handling of cases, inspection of Chiropractic offices, better coordination with the Division of Investigation and Attorney General's Office on case investigation and prosecution, and enhanced disciplinary authority for unprofessional conduct or other violations of the law by licensed chiropractors.*

Comments: The Board has made significant efforts to improve its enforcement program. Nonetheless, there are at least four areas where the Board could enhance its consumer protection role. For example, the standard time frame for the handling of complaints is still approximately six months, and a substantial number of investigations take from one to two years to complete before any legal action is taken. Like other boards that have gone through the sunset review process, the Board should attempt to reengineer its enforcement process to shorten the time frame for investigations. Additionally, the Board does not receive information on civil actions brought against its licensees. Most health care related boards have established mandatory reporting procedures with the courts, insurance carriers, and hospitals on civil actions brought against their licensees. This information has proven to be a valuable tool in identifying potentially dangerous medical practitioners. Also, it is not clear what authority the Board has to inspect Chiropractic offices to assure they meet appropriate health and safety standards, and are adhering to appropriate practice standards of the profession. This authority, and when it will be used, should be clarified by the Board. Lastly, the Board needs to enhance its disciplinary authority by adopting similar standards of other health-related boards to determine unprofessional conduct or other violations of law by chiropractic practitioners.

ISSUE #7. (USE EXCESS FUND RESERVE TO IMPROVE BOARD'S PROGRAMS?) The Board has over two years of excess fund reserve in its current budget. It is only necessary that they retain three to six months reserve to be fiscally sound. However, the Board may have increased staffing needs to improve its licensing and enforcement programs as recommended by the Joint Committee.

Recommendation #7: *The Joint Committee recommends that the Board should seek appropriate spending authority for an increase in staff to improve its licensing and enforcement programs. If Board revenues are projected to remain stable after this spending increase, the Board should also consider reducing license renewal fees for a limited time period.*

Comments: The Board has over \$3.6 million in reserve for the current fiscal year, which is twice its annual budget. This reserve is expected to grow to \$4.5 million in two years. Clearly, this is an excessive amount to keep in reserve. Generally, a three- to six-month reserve is recommended as a prudent amount. Unlike other special funded programs, this Board was not subject to a General Fund transfer during the early 1990s state fiscal crisis. Thus, the Board's reserve level cannot be attributed to

a one-time return of monies. Though it is difficult to isolate the cause of the growing reserve, this trend is troubling given that the Board has been criticized for lax enforcement efforts.

The Board should develop a plan for spending down its reserves. Options to do this include temporarily reducing fees, funding one-time projects such as information technology upgrades, and dedicating more resources to its licensing and enforcement programs. Before selecting any of these options, the Board needs to carefully evaluate its long-term funding requirements.

ISSUE #8. (CHANGE COMPOSITION OF THE BOARD?) The current composition of the Board includes five professional members and only two public members (seven total members). The Governor chooses all members of the Board. Most other health-related consumer boards have a better balance of public members to professional members, and all boards under the Department allow the Senate and Assembly to each choose a member of the board.

Recommendation #8: *The Joint Committee recommends that there should be two additional public members added to the Board, bringing the Board's composition to 5 professional members and 4 public members (nine total members). One public member should be appointed by the Senate and one public member by the Assembly.*

Comments: The Joint Committee has consistently recommended providing a better balance of public members to professional members for health-related licensing boards, especially if there has been some evidence of problems with a board in the past of lacking a consumer protection focus, and being somewhat more dominated by industry interests. The Board itself recognizes the current trend toward an increase in public representation on regulatory boards and would welcome input from more public members. As stated by the Board, this increase in public members may help increase the consumer perspective in Board deliberations. It recommended increasing the Board by two public members. This would bring the total membership of the Board to nine, with 5 professional members and 4 public members. The Senate and Assembly should each be able to choose one of the public members, since all other boards under the Department permit the Legislature to appoint members.

There are currently eight health-related consumer boards that have similar professional majorities, (one additional professional member over that of the public membership). Two health-related boards have a public majority. The only super-professional majority boards (with a 2 to 1 ratio) are the Medical and Dental boards. (It should be noted that any change in the membership to this Board will possibly require a change in the Initiative Act.)